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C O N F I D E N T I A L SECTION 01 OF 02 MOSCOW 002652

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SUBJECT: RUSSIAN FEDERAL CUSTOMS SERVICE DROPS LAWSUIT
AGAINST BANK OF NEW YORK

Classified By: ECONOMIC MINISTER COUNSELOR MATTHIAS MITMAN FOR REASONS
1.4 (b/d)

¶1. (SBU) Summary: The Federal Customs Service of the Russian Federation announced on October 22 that it had dropped its USD 22.5 billion RICO lawsuit against the Bank of New York Mellon (BONY), filed in the Moscow City Arbitration Court, in exchange for BONY paying USD 14 million to Russia to cover legal costs. Though claiming it is unconnected to the settlement, BONY is offering a loan facility to Russian state banks of USD 4 billion over 4 years, supposedly at commercial rather than subsidized rates. Like BONY, the Russian Ministry of Finance denies that the loan is related to the settlement. End Summary.

Background

¶2. (U) From 1996-1999, a Bank of New York Mellon (BONY) employee participated in illegal banking operations, including helping Russians illegally transfer USD 7.5 billion out of Russia through BONY accounts. In 2005 BONY signed a non-prosecution agreement with the U.S. Attorney's Office for the Southern District of New York to resolve related claims, with BONY agreeing to pay the USG USD 14 million. In May 2007, asserting that BONY had admitted criminal liability in this 2005 agreement, the Federal Customs Service (FCS) of the Russian Federation brought a claim in the Moscow City Arbitration Court for USD 22.5 billion under the U.S. RICO statute. In July 2008, FCS received a letter from the US Attorney's Office explaining the non-prosecution agreement of 2005 and confirming that BONY had not been charged with any related criminal violation. In September 2009, REA Novosti reported that Russian Minister of Finance Kudrin told the press that FCS did not have enough evidence to prove the guilt of BONY.
Settled At Last

¶3. (U) On October 22, FCS withdrew its claim against BONY in the Moscow City Arbitration Court. In their joint press release the same day, BONY and FCS announced that they had reached an out-of-court settlement agreement in which BONY agreed to pay USD 14 million for FCS's legal costs, an amount equal to BONY's settlement with the United States Department of Justice. Head of FCS Andrey Belyaninov stated in the press release, "This case is an example of the increased vigilance of the Russia Federation in international financial markets. The fact that the Russian court scrutinized this case and the fact that the dispute was finally settled by an agreement between the parties also demonstrated the efficiency and independence of Russian courts."

14. (C) While the joint press release made no mention of it, a package of new loans BONY plans to offer to Russian state banks is widely believed to be an informal part of the settlement. Earlier press reports stated that this renewable loan facility would consist of a USD 400 million tranche every 180 days, totaling USD four billion over five years. This facility would be at commercial rates of LIBOR plus 2.5%. According to an October 23 article in Russian daily Kommersant, however, the facility will be half a billion USD every 180 days, reaching the same USD four billion in only four years.

15. (C) Stanislav Puginskiy, a partner in a law firm representing the bank, stated that BONY's decision to offer this loan facility was not related to the court case, but was rather a political decision by BONY, whose strategy is to develop financial relations with Russia. An advisor to Finance Minister Kudrin told us that this loan not only was unrelated to the lawsuit, but also had nothing to do with the GOR. Bank analysts agree that such a credit line would be beneficial both to GOR and BONY, regardless of the lawsuit.

Comment

16. (C) While both sides deny, the USD four billion loan package from BONY to Russian state banks appears at least informally to be part of the out-of-court settlement reached with the GOR. While the BONY loans are ostensibly at commercial rates, the loan terms and the recipients remain to be seen. The loan package benefits both parties. For BONY, this is a way to resolve a thorny legal issue and to get back

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into the Russian market. The loan will provide the GOR, faced with budget deficits and the need to raise about USD 20 billion for each of the next two years, greater support for their state banks. End Comment.
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